

In Re Application of  
CHRISTINA WALLIS et al.,  
Applicants.

Case No. 18-mc-80147-DMR

**ORDER GRANTING LEAVE TO  
CONDUCT DISCOVERY IN FOREIGN  
LITIGATION PURSUANT TO 28 U.S.C.  
§ 1782**

Re: Dkt. No. 1

Applicants Christina Wallis, Raymond Stancer, Jonathan Stancer, Charles Stancer, Dr. Joseph Caplan, Derek Luth, Yahel Nov, Tom Pires, and Nella Pires (collectively, “Applicants”) filed this application to conduct discovery in foreign proceedings pursuant to 28 U.S.C. § 1782. [Docket No. 1 (Appl.)]. Having considered the papers submitted and the relevant legal authorities, the court GRANTS the application.

**I. BACKGROUND**

Applicants are individuals and plaintiffs in two lawsuits<sup>1</sup> pending in the Ontario Superior Court of Justice, in Canada (“Ontario Litigation”). Both actions arise out of “explicit defamatory content and comments anonymously published on various Internet websites,” allegedly posted by the defendant in those actions, Nadire Atas (“Atas”). Appl. at 2.

In 2004, Applicant and attorney Raymond Stancer’s law firm “was retained as counsel to represent the plaintiffs in a contested mortgage enforcement action” against Atas and thereafter obtained a judgment against her. [Docket No. 2 (Stancer Decl.) ¶¶ 5-6.] Applicant Tom Pires, a mortgage broker, was Stancer’s client and a party to the enforcement action, and Applicant Nella Pires is his wife. [Docket No. 3 (T. Pires Decl.) ¶ 3; Docket No. 4 (N. Pires Decl.) ¶ 3.] After the 2004 proceedings, Atas refinanced the subject property and defaulted on the second mortgage as

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<sup>1</sup> *Dale & Lessman LLP, et al. v. Nadire Atas* (Case No. CV-16-544153); *Dr. Joseph Caplan, et al. v. Nadire Atas* (Case No. CV-18-594948).

1 well, resulting in further proceedings against her in 2008. Appl. at 4; Stancer Decl. ¶ 6; Docket No.  
2 6 (Wallis Decl.) ¶ 5. Applicant Christina Wallis represented the refinancing lender-plaintiff in those  
3 mortgage enforcement actions and obtained various judgments against Atas. Wallis Decl. ¶ 5.

4 Between 2004 and 2011, Atas “commenced dozens of frivolous lawsuits related to [the]  
5 mortgage transactions and related proceedings against lawyers who had acted for and against her,  
6 lenders, real estate agents and mortgage brokers, alleging various claims of fraud and  
incompetence.” Docket No. 8 (“G. Caplan Decl.”) ¶ 8; Wallis Decl. ¶ 6. Third-party attorney Gary  
7 Caplan<sup>2</sup> represented the insurer for the defendant-attorneys in those actions. G. Caplan Decl. ¶ 8.  
8 In November 2014, Wallis and G. Caplan commenced proceedings to have Atas declared a  
9 vexatious litigant, which the Ontario Superior Court granted in February 2017. *Id.* at ¶ 9; Wallis  
10 Decl. ¶ 7.

11 In approximately 2010, Atas allegedly “undertook a defamatory internet campaign against  
12 Raymond Stancer and his firm, . . . impugning their competence, character, and actions.” G. Caplan  
13 Decl. Ex. 1 (Statement of Claim) ¶ 19; Stancer Decl. ¶ 7. Stancer and his firm commenced a  
14 defamation action against Atas, and the court in that proceeding issued two orders enjoining Atas  
15 from “making further postings respecting [that] firm.” Stancer Decl. ¶ 8. In approximately  
16 September 2015 (about the same time as the vexatious litigant action commenced), “further  
17 anonymous defamatory postings on other websites began to appear,” targeting both Stancer’s firm  
18 and other law firms and lawyers who “had some connection with Atas during the ongoing mortgage  
19 enforcement proceedings.” *Id.* at ¶ 9; Wallis Decl. at ¶ 8. The first of the two actions underlying  
20 the instant application (“2016 Defamation Action”<sup>3</sup>) was filed “[a]s a result of this second round of  
online defamatory material.” Stancer Decl. at ¶ 10; Wallis Decl. at ¶ 9.

21 Although the internet postings underlying the 2016 Defamation Action were anonymous,  
22 Atas admitted that she authored those postings in a written affidavit. Stancer Decl. ¶ 11; Wallis  
23 Decl. ¶ 11. She has since allegedly “ratcheted up her online defamation campaign by additionally  
24 attacking the family members of [the attorney applicants]”, including “several family members of  
25 Christina Wallis” (who are not Applicants here); Applicants Jonathan and Charles Stancer  
26 (Raymond Stancer’s adult children); Applicant Dr. Joseph Caplan (Gary Caplan’s brother); and

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28 <sup>2</sup> “G. Caplan” will refer to Gary Caplan; “J. Caplan” will refer to his brother, Dr. Joseph Caplan.

<sup>3</sup> The plaintiffs in the 2016 Defamation include Stancer and Wallis.

1 Applicants Derek Luth and Yahel Nov (Gary Caplan's sons-in-law). Appl. at 7; Wallis Decl. ¶ 18;  
2 Stancer Decl. ¶ 15; G. Caplan Decl. ¶ 5. Atas has also allegedly targeted Tom Pires and Nella Pires.  
3 T. Pires Decl. ¶¶ 5-10; N. Pires Decl. ¶¶ 5-10. The latest round of defamatory conduct spurred the  
4 second case underlying this Application ("2018 Defamatory Action").<sup>4</sup>

5 All Applicants "have been the targets of explicit online postings and comments accusing  
6 each of them of various incidents of egregious professional and personal misconduct." Appl. at 7.  
7 The attorney-Applicants have been accused of incompetence, dishonesty, and fraud. Wallis Decl.  
8 ¶ 8; Stancer Decl. ¶ 7. Their family members have been accused of being child pornographers and  
9 pedophiles. Wallis Decl. ¶ 14; Stancer Decl. ¶ 17. Tom Pires has been described as a "fraudster  
10 and child pornographer" and Nella Pires has also been accused of fraud. T. Pires Decl. ¶ 7; N. Pires  
Decl. ¶ 7.

11 The internet posts in question have appeared on Wordpress, Pinterest, and Facebook. *See*  
12 Statement of Claim, Schedules A-C, E-G.<sup>5</sup> Stancer attests that he and his sons are the subjects of  
13 posts on Pinterest and Wordpress. Stancer Decl. ¶ 26; *see, e.g.*, Docket No. 7 (Lee Decl.) Exs. 10  
14 (Pinterest post referring to Raymond Stancer as "Fraudulent Toronto Lawyer"), 8 (Wordpress post  
alleging Charles Stancer is a "pedophile luring au pairs"), 11 (Pinterest post referring to "Jon Stancer  
15 Pedophile"). Tom and Nella Pires testify that they are identified in posts on Wordpress. T. Pires  
Decl. ¶¶ 5-8; N. Pires Decl. ¶¶ 5-8; *see, e.g.*, Lee Decl. Exs. 13 (Wordpress post about "Tom Pires  
16 . . . facing child porn charges"), 14 (Wordpress post stating that Tom and Nella Pires helped  
mastermind a Ponzi scheme). J. Caplan attests that he is the subject of posts on Wordpress.com.  
17 Docket No. 5 (J. Caplan Decl.) ¶¶ 7-11; *see, e.g.*, Lee Decl. Ex. 7 (Wordpress post stating that  
18 "Cardiologist physician Dr. Joseph Caplan dredged the 'darkest recesses of the internet' for vile  
snaps of abused children"). He further testifies that he has been contacted on Facebook by a user  
19 named "Fayeth Cee'z", who sent him an image of himself with the words "Pedophile Dr. Joseph  
20 Caplan" super-imposed on it. J. Caplan Decl. ¶ 14, Ex. 2 (screenshot of the Facebook exchange).

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25 <sup>4</sup> The plaintiffs in the 2018 Defamation Action are Dr. Joseph Caplan, Raymond Stancer, Jonathan  
26 Stancer, Charles Stancer, Derek Luth, and Yahel Nov. G. Caplan Decl. ¶ 5.

27 <sup>5</sup> The attachments to the Statement of Claim identify "the totality of the online postings that are that  
28 are the subject of this Application." G. Caplan Decl. ¶ 15. However, "select examples of the  
numerous defamatory postings concerning Applicants" are attached to the Declaration of Michael  
Jason Lee, filed concurrently with the Application.

1 Wallis testifies that she and her family members were identified in posts on Wordpress and Pinterest.  
2 Wallis Decl. ¶¶ 15-21; *see, e.g.*, Lee Decl. Exs. 4 (Wordpress post titled “Christina J. Wallis, a  
3 fraudster lawyer”).

4 Applicants now seek leave to issue subpoenas to Wordpress, Pinterest, and Facebook to  
5 prove that the author of these posts was Atas. Applicants’ proposed subpoenas seek documents  
6 “that identify the subscriber and/or IP Address login information for the WordPress, Pinterest, and  
7 Facebook user(s) responsible for the anonymous defamatory postings and messages targeted at  
8 Applicants.” G. Caplan Decl. ¶ 14. Applicants’ proposed subpoena to Wordpress seeks identifying  
9 information (including subscriber information and IP address) for the author(s) of numerous  
10 Wordpress blogs that have posted allegedly defamatory material about Applicants, examples of  
11 which are cited above. *See* Appl. Ex. 1. Similarly, Applicants’ proposed subpoena to Pinterest  
12 seeks identifying information for the poster(s) of allegedly defamatory material about Applicants,  
13 examples of which are cited above. *See* Appl. Ex. 2. Finally, Applicants’ proposed subpoena to  
14 Facebook seeks identifying information solely for the account allegedly owned by “Fayeth Cee’z”,  
who contacted Caplan as detailed above. *See* Appl. Ex. 3.

15 **II. LEGAL STANDARD**

16 Applicants seek discovery pursuant to 28 U.S.C. § 1782, which states as follows:

17 The district court of the district in which a person resides or is found may  
18 order him to give his testimony or statement or to produce a document or  
19 other thing for use in a proceeding in a foreign or international tribunal,  
including criminal investigations conducted before formal accusation. The  
order may be made . . . upon the application of any interested person and  
may direct that the testimony or statement be given, or the document or  
other thing be produced, before a person appointed by the court . . . To the  
extent that the order does not prescribe otherwise, the testimony or  
statement shall be taken, and the document or other thing produced, in  
accordance with the Federal Rules of Civil Procedure.

22 28 U.S.C. § 1782(a). The purpose of section 1782 is “to provide federal-court assistance in the  
23 gathering of evidence for use in a foreign tribunal.” *Intel Corp. v. Advanced Micro Devices, Inc.*,  
24 542 U.S. 241, 247 (2004); *see also Schmitz v. Bernstein Liebhard & Lifshitz, LLP*, 376 F.3d 79, 84  
25 (2d Cir. 2004) (noting that section 1782 has the “twin aims” of “providing efficient means of  
26 assistance to participants in international litigation in our federal courts and encouraging foreign  
27 countries by example to provide similar means of assistance to our courts”) (citation and quotations  
28

1 omitted).

2 A district court is authorized to grant a section 1782 application where (1) the person from  
3 whom the discovery is sought resides or is found in the district of the district court to which the  
4 application is made, (2) the discovery is for use in a proceeding before a “foreign or international  
5 tribunal,” and (3) the application is made by the foreign or international tribunal or “any interested  
6 person.” 28 U.S.C. § 1782(a); *see also Intel*, 542 U.S. at 246-47; *In re Republic of Ecuador*, No.  
7 C-10-80255-CRB (EMC), 2010 WL 3702427, \*2 (N.D. Cal. Sept. 15, 2010).

8 “However, simply because a court has the authority under § 1782 to grant an application  
9 does not mean that it is required to do so.” *In re Republic of Ecuador*, 2010 WL 3702427, at \*2  
10 (citing *Intel*, 542 U.S. at 264). The Supreme Court has identified several discretionary factors that  
11 a court should take into consideration in ruling on a Section 1782 request: (1) whether the “person  
12 from whom discovery is sought is a participant in the foreign proceeding”; (2) “the nature of the  
13 foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign  
14 government or the court or agency abroad to U.S. federal court judicial assistance”; (3) whether the  
15 request “conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of  
16 a foreign country or the United States”; and (4) whether the request is “unduly intrusive or  
17 burdensome.” *Intel*, 542 U.S. at 264-65.

18 **III. DISCUSSION**

19 **A. Authority to Issue Subpoena**

20 The court has reviewed Applicants’ request and determines that the statutory requirements  
21 of section 1782 have been satisfied.

22 First, all three proposed recipients reside or may be found in the Northern District of  
23 California. For the purposes of satisfying this requirement, a company “may be found” in its place  
24 of incorporation, its headquarters, or where it undertakes “systematic and continuous local  
25 activities.” *In re Godfrey*, 526 F. Supp. 2d 417, 422 (S.D.N.Y. 2007). Automattic, Inc. is a Delaware  
26 corporation that owns Wordpress.com and has its principal place of business in San Francisco, CA.  
27 Lee Decl. ¶¶ 3-5, Ex. 1. Pinterest and Facebook are also Delaware corporations with their principal  
28 places of business in San Francisco, CA and Menlo Park, CA, respectively. Lee Decl. ¶¶ 6-11, Exs.  
2-3. As all three companies engage in “systematic and continuous local activities” within the

1 Northern District of California, they are subject to section 1782 discovery orders from this Court.

2 Second, the requested discovery is for use in two Canadian defamation lawsuits, which are  
3 proceedings before a foreign tribunal. Relevancy in the context of a section 1782 application is  
4 “broadly construed and encompasses any material that bears on, or that reasonably leads to other  
5 matters that could bear on, any issue that is or may be in the case.” *In re Veiga*, 746 F. Supp. 2d 8,  
6 19 (D.D.C. 2010) (quoting *Alexander v. Fed. Bureau of Investigation*, 194 F.R.D. 316, 325 (D.D.C.  
7 2000)). “When relevance is in doubt, the district court should be permissive.” *Id.*; see also *Weber*  
8 *v. Finker*, 554 F.3d 1379, 1384-85 (11th Cir. 2009) (“Section 1782 does not require that every  
9 documented discovered be actually used in the foreign proceeding.”). Here, Applicants want  
10 identifying information for person(s) who have posted anonymous and allegedly defamatory  
11 material about Applicants on the internet. The identity of such person(s) are central to their  
12 defamation claim against Atas. Applicants have adequately shown that the discovery they seek  
meets the liberal standard in section 1782.

13 Third and finally, the application is made by plaintiffs in those lawsuits, who qualify as  
14 “interested persons” by virtue of being parties in the foreign proceeding. *Lancaster Factoring Co.*  
15 *Ltd. v. Mangone*, 90 F.3d 38 (2d Cir. 1996) (“The legislative history to § 1782 makes plain that  
16 ‘interested person’ includes ‘a party to the foreign . . . litigation.’”) (quoting Senate Report at 8,  
17 1964 U.S.C.C.A.N. at 3789); *Intel*, 542 U.S. 241, 256 (“No doubt litigants are included among, and  
may be the most common example of, the “interested person[s]” who may invoke § 1782 . . . ”).

18 As Applicants meet the three threshold requirements for section 1782 relief, the court turns  
19 to the question of whether the discretionary *Intel* factors weigh in favor of or against issuance of the  
20 subpoenas.

21       **B. Discretionary Factors**

22 With respect to the first discretionary factor, the Supreme Court has stated:

23       [W]hen the person from whom discovery is sought is a participant in the  
24 foreign proceeding . . . , the need for § 1782(a) aid generally is not as  
25 apparent as it ordinarily is when evidence is sought from a nonparticipant  
26 in the matter arising abroad. A foreign tribunal has jurisdiction over those  
27 appearing before it, and can itself order them to produce evidence. In  
contrast, nonparticipants in the foreign proceeding may be outside the  
foreign tribunal’s jurisdictional reach; hence, their evidence, available in the  
United States, may be unobtainable absent § 1782(a) aid.

1       *Intel*, 542 U.S. at 264 (internal quotations and citations omitted). Here, none of the three proposed  
2 recipients are participating in the litigation before the Ontario Superior Court of Justice. G. Caplan  
3 Decl. ¶ 17 (“Wordpress, Pinterest, and Facebook will not be made parties to the Ontario  
4 Litigation.”). As “the discovery by the proposed subpoenas is currently outside the reach of the  
5 Ontario Courts,” it may be unobtainable without a discovery order under section 1782. *See id.* The  
6 first factor weighs in favor of issuing the subpoenas.

7              The second discretionary factor examines “the nature of the foreign tribunal, the character  
8 of the proceedings underway abroad, and the receptivity of the foreign government or the court or  
9 agency abroad to U.S. federal court judicial assistance.” *Intel*, 542 U.S. at 264-65. Here, the “nature  
10 and character of the proceedings involve Applicants’ online defamation claims,” and “the identity  
11 of the individual(s) responsible for the anonymous online postings and comments is critical [to those  
12 claims.]” Appl. ¶ 18; G. Caplan Decl. ¶ 18. “Consistent with the statute’s modest *prima facie*  
13 elements and Congress’s goal of providing equitable and efficacious discovery procedures, district  
14 courts should treat relevant discovery materials sought pursuant to § 1782 as discoverable unless  
15 the party opposing the application can demonstrate facts sufficient to justify the denial of the  
16 application.” *In re Bayer AG*, 146 F.3d 188, 195 (3d Cir. 1998). Further, “[c]urrent Canadian  
17 statutes suggest receptivity by the Ontario courts to the evidence sought by Applicants. Canada  
18 maintains a similar procedural mechanism for U.S. litigants seeking to compel evidence located in  
19 Canada for use in a U.S. proceeding.” G. Caplan Decl. ¶¶ 20-22. Applicants have provided adequate  
20 evidence that the discovery sought is relevant to the proceedings abroad and that Canadian courts  
21 will be receptive to that evidence. Therefore, this factor weighs in favor of granting Applicants’  
22 request.

23              The third discretionary factor considers whether the request “conceals an attempt to  
24 circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United  
25 States.” *Intel*, 542 U.S. at 264-65. There is no evidence that Applicants in the instant case are  
26 attempting to circumvent Canadian law or procedure. Applicants have brought causes of action for  
27 defamation and harassment based on the content of numerous internet postings that have been  
28 presented to the court. The postings accuse named persons of fraud, illicit sexual behavior, and

1 other crimes or egregious acts, and Applicants have submitted declarations from the named persons  
2 affirming that (1) they are the people identified in such postings and (2) the factual claims in those  
3 postings are false. The information sought appears relevant and central to proving those claims and  
4 there is no evidence of any barrier to seeking discovery directly from the proposed recipients other  
5 than lack of jurisdictional reach. This factor weighs in favor of issuing the proposed subpoenas.

6 Fourth and finally, a court may consider whether a request is “unduly intrusive or  
7 burdensome.” *Intel*, 542 U.S. at 265. Applicants are seeking to issue three subpoenas, one each to  
8 Wordpress, Pinterest, and Facebook. Each subpoena seeks identifying information for the poster(s)  
9 of the specific content that is detailed in this application and supporting documentation. Statement  
10 of Claim, Schedules A-C, E-G; Stancer Decl. Ex 1; T. Pires Decl. Ex 1; J. Caplan Decl. Exs. 1-2;  
11 Wallis Decl. Ex. 2.; Lee Decl. Exs. 1-14. The subpoenas are narrowly tailored to obtain relevant  
12 information that is central to Applicants’ claims, and therefore are not overly intrusive or  
13 burdensome.

14 These findings do not preclude any of the witnesses from contesting the subpoena. The  
15 Ninth Circuit has held that applications for subpoenas pursuant to section 1782 may be filed ex parte  
16 because “[t]he witnesses can . . . raise[ ] objections and exercise[] their due process rights by motions  
17 to quash the subpoenas.” *In re Letters Rogatory from Tokyo Dist.*, 539 F.2d 1216, 1219 (9th Cir.  
18 1976).

19 **IV. CONCLUSION**

20 For the reasons described above, the court grants Applicants’ ex parte application.  
21 Applicants may serve finalized versions of the subpoenas attached as Exhibits A-C to the  
22 Application, which must include a return date at least thirty (30) days after service to allow Atas,  
23 Wordpress, Pinterest, and/or Facebook to contest the subpoenas if they desire. The subpoenaed  
24 third parties shall have 30 calendar days after the service of the subpoena to contest it.

25 Applicants must serve a copy of this order on the witnesses at the same time as the  
26 subpoenas. **Applicants also must immediately serve a copy of this order and the subpoenas on**  
27 **Atas.**

1           **IT IS SO ORDERED.**  
2           Dated: October 24, 2018  
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